

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION**

**BRIAN S. SMITH,**

**Plaintiff,**

**vs.**

**JO ANNE B. BARNHART,  
Commissioner of Social Security,**

**Defendant.**

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**Case No. 1:01CV 149 LMB**

**MEMORANDUM AND ORDER**

This matter is before the court on plaintiff's Motion for Award of Attorney's Fees Pursuant to 42 U.S.C. Sec. 406(b), along with a Memorandum in Support. (Documents Number 30, 31). Defendant has filed a Response. (Doc. No. 33). Plaintiff filed a Response to Defendant's Response. (Doc. No. 34). Finally, defendant has filed a Motion to Withdraw Defendant's Objection to Plaintiff's Application for Attorney Fees. (Doc. No. 35).

On July 27, 2005, plaintiff, by counsel, filed the present motion for attorney's fees pursuant to the Social Security Act, 42 U.S.C. § 406(b). In his motion, plaintiff states that he was previously awarded \$3,243.75 under the Equal Access to Justice Act (EAJA), and he was awarded \$7,000.00 by the Social Security Administration. Plaintiff seeks an additional \$10,566.75 in attorney's fees. Plaintiff asserts that, after refunding the EAJA fees in the amount of \$3,243.75, and receiving the additional \$10,566.75 he requests, he will have been paid a total of \$17,566.75. Plaintiff states that this amount represents 25% of the past-due benefits awarded to plaintiff, the amount contractually agreed upon by plaintiff and his attorney.

In her response, defendant argued that plaintiff's fee request was unreasonable. In his response to defendant's response, plaintiff argued that his fee request was reasonable in light of the considerable time spent on this matter. On October 7, 2005, defendant filed a Motion to Withdraw Defendant's Objection to Plaintiff's Attorney's Application for Attorney Fees. In this motion, defendant states that she does not object to the award of attorney's fees in the requested amount, yet requests that the court include in its order a provision directing plaintiff's counsel to refund to plaintiff the \$3,243.75 fee previously awarded under the EAJA.

Accordingly,

**IT IS HEREBY ORDERED** that defendant's Motion to Withdraw Defendant's Objection to Plaintiff's Attorney's Application for Attorney Fees (Doc. No. 35) be and it is **granted**.

**IT IS FURTHER ORDERED** that plaintiff's Motion for Award of Attorney's Fees Pursuant to 42 U.S.C. Sec. 406(b) (Doc. No. 30) be and it is **granted**.

**IT IS FURTHER ORDERED** that plaintiff is awarded additional attorney's fees under the Social Security Act, in the amount of \$10,566.75, which together with the amount previously awarded by the Social Security Administration, \$7,000.00, will total \$17,566.75 for and as attorney fees.

**IT IS FURTHER ORDERED** that plaintiff's counsel shall refund to plaintiff the \$3,243.75 fee previously awarded under the Equal Access to Justice Act.

Dated this 28th day of November, 2005.

A handwritten signature in cursive script, reading "Lewis M. Blanton". The signature is written in black ink with some red ink visible in the middle of the signature.

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LEWIS M. BLANTON  
UNITED STATES MAGISTRATE JUDGE